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IN THE

Supreme Court of the United States

October Term, 1951.

No. 493.

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

MATTHEW JOHNSON,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT.

ABRAHAM E. FREEDMAN,
CHARLES LAKATOS,
WILLIAM M. ALPER,
Counsel for Petitioner.

[illegible] 20 Chestnut St. Phila. 6, Pa.

INDEX.

	Page
The Opinions of the Courts Below	1
Jurisdiction	1
Question Presented	1
Statutes Involved	2
Statement of the Case	2
Summary of Argument	4
Argument	7
The Shipowner May Not Make Any Deduction From Any Seaman's Wages Except Where Specifically Authorized by Federal Statute	7
The Wage Statutes Are Not Exclusively Penal or Criminal Statutes But Control as Well the Civil Rights Between Shipowner and Seamen	15
Conclusion	17
Appendix to Respondent's Brief	19
Statutes for Deduction or Forfeiture of Seamen's Wages	19
R. S. § 4522; 46 U. S. C. § 576	19
R. S. § 4525; 46 U. S. C. § 592	19
Act of June 26, 1884, c. 121, § 10, 23 Stat. 55, as amended; 46 U. S. C. § 599	19
R. S. § 4557; 46 U. S. C. § 654	20
R. S. § 4558; 46 U. S. C. § 655	20
R. S. § 4562; 46 U. S. C. § 659	21
R. S. § 4566; 46 U. S. C. § 663	21
Act of June 26, 1884, c. 121, § 11, 23 Stat. 56; 46 U. S. C. § 670	21
R. S. § 4596, as amended; 46 U. S. C. § 701	22
R. S. § 4604, as amended; 46 U. S. C. § 706	23
R. S. § 4605; 46 U. S. C. § 707	24
R. S. § 4603; 46 U. S. C. § 705	24

INDEX (Continued).

Page

Statutes for Protection or Disposition of Seaman's Wages 25
R. S. § 4524; 46 U. S. C. § 591 25
R. S. § 4525; 46 U. S. C. § 592 25
R. S. § 4526; as amended; 46 U. S. C. § 593.. 25
R. S. § 4527; 46 U. S. C. § 594 25
R. S. § 4529, as amended; 46 U. S. C. § 596 ... 26
R. S. § 4530, as amended; 46 U. S. C. § 597 ... 26
Act of June 26, 1884, c. 121, § 10, 23 Stat. 55; 46 U. S. C. § 599 27
R. S. § 4535; 46 U. S. C. § 600 27
Act of March 4, 1915, c. 153, § 12, 38 Stat. 1169; 46 U. S. C. § 601 28
R. S. § 4537; 46 U. S. C. § 602 28
R. S. § 4548; 46 U. S. C. § 605 28
R. S. § 4538; 46 U. S. C. § 621 29
R. S. § 4539; 46 U. S. C. § 622 29
R. S. § 4540; 46 U. S. C. § 623 31
R. S. § 4552; 46 U. S. C. § 644 31
R. S. § 4580, as amended; 46 U. S. C. § 682 ... 32
R. S. § 4581, as amended; 46 U. S. C. § 683 ... 32
R. S. § 4582, as amended; 46 U. S. C. § 684 ... 33
R. S. § 4583, as amended; 46 U. S. C. § 685 ... 34
Act of June 26, 1884, c. 121, § 18, 23 Stat. 57; 46 U. S. C. § 189 34

TABLE OF CASES CITED.

	Page
Bains v. The James and Catherine (C. C., Pa.), Fed. Cas. No. 756 (2 Fed. Cas. at page 422)	8
Brady v. Daly, 175 U. S. 148	16
Cornell v. Gulf Oil Co. (E. D., Pa.), 35 F. Supp. 448	8
Cortes v. Baltimore Insular Line, 287 U. S. 367	6, 14
Eldridge v. Isbrandtsen Company, Inc. (E. D., Pa.), 89 F. Supp. 718	11, 12
Garrett v. Moore-McCormack Co., 317 U. S. 239	14
Halcyon Lines v. Haenn Ship Ceiling and Refitting Corporation, 342 U. S. 282 (Adv. Rep.)	6, 13
The Hudson (S. C., N. Y.), Fed. Cas. No. 6830 (12 Fed. Cas. 805, 806)	8
The Mentor (C. C., Mass.), Fed. Cas. No. 9427	8
Patterson v. The Bark Eudora, 190 U. S. 169	9
Robertson v. Baldwin, 165 U. S. 275	6
Schoenamsgruber v. Hamburg American Line, 294 U. S. 454	8
Shilman v. United States, 2d Cir., 164 F. (2d) 649	12
Socony-Vacuum Oil Co. v. Smith, 305 U. S. 424	14
Taylor v. Calmar S. S. Co. (E. D., Pa.), 35 F. Supp. 335	8
Warner v. Goltra, 293 U. S. 155	14
Waterman S. S. Corp. v. Jones, 318 U. S. 724	14
Wilder v. Inter-Island Steam Navigation Co., 211 U. S. 239	5, 6, 10, 11, 14

STATUTES AND AUTHORITIES CITED.

Page

Act of July 20, 1790, c. 29, 1 Stat. 131 ..... 2, 4, 8

Act of June 7, 1872, c. 322, 17 Stat. 262 ... 2, 5, 6, 8, 13, 15

Act of June 26, 1884, c. 121:

§ 10, 23 Stat. 55, as amended; 46 U. S. C. § 599 .. 11, 19, 27

§ 11, 23 Stat. 56; 46 U. S. C. § 670 ..... 11, 21

§ 18, 23 Stat. 57; 46 U. S. C. § 189 34

Act of March 4, 1915, c. 153, § 12, 38 Stat. 1169; 46 U. S. C. § 601 ..... 5, 6, 10, 28

Norris, The Law of Seamen (1951), p. 366 7

R. S. § 4522; 46 U. S. C. § 576 19

R. S. § 4524; 46 U. S. C. § 591 25

R. S. § 4525; 46 U. S. C. § 592 ..... 19, 25

R. S. § 4526, as amended; 46 U. S. C. § 593 25

R. S. § 4527; 46 U. S. C. § 594 25

R. S. § 4529, as amended; 46 U. S. C. § 596 ... 2, 9, 12, 26

R. S. § 4530, as amended; 46 U. S. C. § 597 26

R. S. § 4535; 46 U. S. C. § 600 27

R. S. § 4537; 46 U. S. C. § 602 28

R. S. § 4538; 46 U. S. C. § 621 29

R. S. § 4539; 46 U. S. C. § 622 29

R. S. § 4540; 46 U. S. C. § 623 31

R. S. § 4548; 46 U. S. C. § 605 28

R. S. § 4552; 46 U. S. C. § 644 31

R. S. § 4557; 46 U. S. C. § 654 ..... 11, 20

R. S. § 4558; 46 U. S. C. § 655 20

R. S. § 4562; 46 U. S. C. § 659 21

R. S. § 4566; 46 U. S. C. § 663 21

R. S. § 4580, as amended; 46 U. S. C. § 682 32

STATUTES AND AUTHORITIES CITED (Continued).

	Page
R. S. § 4581, as amended; 46 U. S. C. § 683	32
R. S. § 4582, as amended; 46 U. S. C. § 684	33
R. S. § 4583, as amended; 46 U. S. C. § 685	34
R. S. § 4596, as amended; 46 U. S. C. § 701	5, 11, 12, 15, 16, 22
R. S. § 4603; 46 U. S. C. § 705	24
R. S. § 4604, as amended; 46 U. S. C. § 706	5, 16, 23
R. S. § 4605; 46 U. S. C. § 707	24
28 U. S. C. 1254 (1)	1

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MATTHEW JOHNSON,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT.

THE OPINIONS OF THE COURTS BELOW.

The opinion of Chief Judge Kirkpatrick of the United States District Court for the Eastern District of Pennsylvania was filed May 19, 1950, and is reported at 91 F. Supp. 872.

The opinion of the United States Court of Appeals for the Third Circuit by Chief Judge Biggs was filed on August 17, 1951, and is reported at 190 F. (2d) 991.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

Whether the shipowner is precluded from making any forfeiture, deduction, set-off or charge against a merchant seaman's wages where not authorized by statute.

STATUTES INVOLVED.

The legislation pertaining to the seaman's wages, inter alia, had its historical origin in the Act of 1790.[1] The general pattern and scheme for the regulation and control of the seaman's wages are contained in the Act of 1872,[2] which embodies substantially all of the provisions enacted for the benefit, protection and discipline of the seamen, and for the benefit and control of the shipowners. That Act pre-empted the field of seamen's wages and regulated the engagement and discharge of the seamen, the payment and disposition of seamen's wages, the immunity of seamen's wages from attachment or arrestment and the circumstances justifying deductions from seamen's wages. The text of the relevant statutes is set forth in the appendix to this brief.

STATEMENT OF THE CASE.

This action was originally brought by the respondent, a merchant seaman, to recover earned wages withheld from him and waiting time under R. S. § 4529, 46 U. S. C. § 596.

Respondent, Matthew Johnson, was engaged as a messman on petitioner's S. S. "Stephen W. Kearney" on February 3, 1948. He served until April 21, 1948, when an altercation occurred between another crew member and himself, in the course of which respondent inflicted a knife wound on the other necessitating medical care and attention (R. 13, 14). Johnson was relieved from duty and thereafter turned over to the United States Marshal for trial (R. 20). He was tried on June 11, 1948, in the United States District Court for the Eastern District of Pennsylvania, upon a criminal indictment arising out of the stabbing, and was acquitted by the jury upon a plea of self-defense.

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1. Act of July 20, 1790, c. 29, 1 Stat. 131.
2. Act of June 7, 1872, c. 322, 17 Stat. 262.

Demand was made for payment of the wages earned during the period from February 3rd to April 21st, 1948, but petitioner refused to make payment and deducted the alleged unliquidated expenses relating to the hospitalization, medical care, repatriation, and subsistence for the wounded seaman, and for the expense for the deviation of the vessel, pilotage, manifests and harbor dues, extra fuel for the vessel and extra food for the crew (R. 13). The petitioner, Isbrandtsen Company, Inc., also refused to pay the wounded seaman (Brandon) and deducted these same expenses from his wages (R. 23, 24). The Captain of the vessel did not "log" Johnson in connection with the altercation and made no entry in the official log book imposing any fine or penalty or charges for the expenses incurred (R. 22). The master did not make the decision to forfeit the wages, but that decision was made at the petitioner's office and the master simply accepted it without question (R. 23).

The libel was defended on the ground that the expenses incurred as a result of the stabbing were properly forfeited from wages and therefore were the proper subject of a claim of set-off.

The trial judge awarded the earned wages to the respondent on the ground that payment of the seaman's wages was mandatory under federal statute and only those deductions could be made which were specifically authorized by statute. There being no provision in the federal legislation authorizing or permitting any deductions under circumstances such as at bar, the trial court concluded that petitioner could not legally withhold the earned wages. The trial judge, however, denied the claim for waiting time upon the ground that these earned wages were not withheld without reasonable cause.

The Court of Appeals affirmed the trial court on the same basis and held that any other result would be contrary to the existing legislation and tantamount to judicial legislation.

SUMMARY OF ARGUMENT.

When a seaman signs a contract of shipment he surrenders his liberty and freedom during the entire period of the contract. In the real sense of the word, the Master becomes a trustee for the personal safety of all of the men under his command and for all of the wages and emoluments which they earn during the voyage. While shore employees are able to provide sustenance for their families from wages weekly paid, seamen must abide the end of the voyage before full payment of their earnings can be demanded or paid. Because of the very nature of their calling, seamen are prey in every port for the scheming and the unscrupulous and were it not for the statutory provision prohibiting more than a limited payment of wages prior to the termination of the voyage, and the statutory provisions limiting deductions and prohibiting attachments, seamen would themselves tend to dissipate their wages and become harnessed with debts to the great prejudice, not only of the seamen, but also of their dependents.

Under the maritime law, the courts have exercised a solicitude for seamen which can only be properly understood by an examination of the entire history relating to seamen. The courts were quick to adopt the "wardship theory" thereby throwing a protective cloak around seamen to immunize them from sharp practices and overreaching on the part of all of those seeking unfair advantage. Beyond this, the Congress has enacted legislation to insure complete protection for this important class of employees. The first expression of Congressional policy appears in the Act of 1790[3] which dealt with only a few problems and was a limited forerunner of later and more comprehensive legislation. In some of the early lower court cases, set-offs against wages were permitted in certain instances. Later decisions took a conflicting view. The early decisions were used by the shipowners as a pretext for seizing every provocation to withhold seamen's

3. Act of July 20, 1790, c. 29, 1 Stat. 131.

wages. These abuses grew to such proportion that the Congress was forced to take drastic action and adopted the Shipping Commissioner's Act of 1872.[4] This legislation pre-empted the entire field and undertook to regulate the payment and the protection of seamen's wages under all circumstances. This enactment abrogated all previous judicial expressions on the right of set-off against wages, irrespective of their validity. The early cases which petitioner suggests formulated its version of the rule of set-offs, were lower court cases prior to the Act of 1872 and long before this Court's decision in *Wilder v. Inter-Island Steam Navigation Co.*, 211 U. S. 239. This Court did not deal with the problem until after the Act of 1872 in the *Wilder* case.

The Act of 1872 (Section 596 of Title 46, U. S. C.) requires payment within twenty-four hours after the discharge of the cargo, or within four days after the seaman is discharged, whichever first happens, and failure to make such payment entitles the seaman to two days' pay for each day that the Master fails to make payment. Section 601 of Title 46, U. S. C. prohibits the attachment or arrestment of seamen's wages by any court, except for the support of a wife or children. Section 701 of Title 46, U. S. C. sets forth some of the circumstances under which deductions may be made from a seaman's wages where the seamen engage in certain types of misconduct. The foregoing provisions and other sections of this Act make it clear that the Congress was legislating to regulate and control the payment of and the deduction from seamen's wages in all aspects. The legislation is, in essence, remedial in character, as is indicated in the title of the Act, 17 Stat. 262. While several of the provisions impose penalties involving imprisonment for misconduct of the seamen, those provisions which authorize deductions from the wages, control the civil rights of the shipowner and seamen, since the forfeitures are payable to the shipowner (46 U. S. C. § 706).

4. Act of June 7, 1872, c. 322, 17 Stat. 262.

The fact that there are several penalty provisions involving prison sentences against the seamen, does not change the basic character of this remedial legislation. Any possible forfeiture of wages must necessarily be strictly limited to the Act and the legislation must be construed in consonance with the long established rule that seamen are "wards of the admiralty." The suggestion that seamen are any less wards of the admiralty today than they were many years ago, has repeatedly been rejected by this Court. If anything, there is more reason today for the courts to exercise extraordinary solicitude for the seamen than ever before. *Robertson v. Baldwin*, 165 U. S. 275; *Cortes v. Baltimore Insular Line*, 287 U. S. 367.

The prohibition against attachment of seamen's wages (46 U. S. C. § 601) first appearing in the Act of 1872, essentially disposes of the problem before this Court. In *Wilder v. Inter-Island Steam Navigation Co., supra*, this Court held that the attachment of a seaman's wages to satisfy a judgment is prohibited by Section 601. In the instant case, had the shipowner obtained judgment against the Respondent in an independent action for the damage done, Section 601 and the *Wilder* case would have prohibited satisfaction of that judgment by attachment of the seaman's wages in its own hands. Without judgment, the present attempted attachment of wages is a deliberate circumvention of Section 601 and, a fortiori, cannot be sustained.

Finally, in view of the existing extensive legislation on seamen's wages and other seamen's rights, there is indicated a clear intention on the part of the Congress to reserve for itself the solution of the problems arising in this field. It is suggested, consistent with the policy recently expressed in *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corporation*, 342 U. S. 282 (Adv. Rep.), that the extension of the right of set-off urged by the petitioner, might, for reasons of policy, be considered by this Court as falling more properly within the function of the Congress.

ARGUMENT.

The Shipowner May Not Make Any Deduction From Any Seaman's Wages Except Where Specifically Authorized by Federal Statute.

The early days of our Merchant Marine saw many deplorable eras in the handling of seamen and their compensation for services. Aside of the fact that over-zealous ship's officers inflicted excessive and unnecessary physical punishment, the masters indulged in many abuses for the purpose of depriving the seamen of their hard-earned wages. For example, in all too many instances ship masters abused seamen to the point of forcing a desertion and thereby enabling the shipowner to forfeit the seamen's wages.[5]

With the view of effecting some relief from the prevailing discreditable practices, the Congress enacted the first seamen's statute, which provided generally that the master must enter into a contract of shipment with the crew; that the seamen were entitled to a percentage of earned wages at each port of call unless otherwise provided by agreement and that wages must be paid at a specified time at the end of the voyage;[6] that there be a medicine chest and certain minimum stores and provisions aboard the vessel; and that a seaman who failed to report on board would forfeit from his wages one day's pay for every hour he was late, and, where the seaman deserted, all of his pay and personal effects were subject to forfeiture, and he was liable to arrest and forcible return to

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5. Norris, *The Law of Seamen* (1951), at page 366:

"One of the abuses leading to the enactment of the Shipping Commissioner's Act was the proclivity of certain owner-masters of making conditions so intolerable for the mariner that he was virtually forced to desert at a foreign port, thus forfeiting whatever wages were due him. . . ."

6. This section did not provide a "2 for 1" penalty for improper withholding of wages. Accordingly, although the seaman had a right to sue for the wages, this was no deterrent to the shipowner, since if he lost the suit, he was not required to pay any more than he was obligated to pay at the end of the voyage.

the vessel. This statute was a limited forerunner of the present seamen's statutes and did not in any sense legislate with respect to all of the problems of seamen's wages.

Because the Act of 1790 covered only a very limited phase of the subject matter relating to the seamen's wages, the admiralty courts were confronted with the necessity of making determinations without the benefit of legislative mandate. Although the admiralty courts did not recognize a general right of set-off in admiralty, *The Hudson* (S. C., N. Y.), Fed. Cas. No. 6830 (12 Fed. Cas. 805, 806); *Bains v. The James and Catherine* (C. C., Pa.), Fed. Cas. No. 756 (2 Fed. Cas. at page 422), in several cases the lower courts permitted a set-off against seamen's wages for misconduct, in order to effect a solution to the problem. *The Mentor* (C. C., Mass.), Fed. Cas. No. 9427. This assumption of general equitable jurisdiction is open to serious question in view of the fact that courts of admiralty do not have general equitable jurisdiction, *Schoenamsgruber v. Hamburg American Line*, 294 U. S. 454, 457. Moreover, in cases involving maintenance and cure, which has been held coextensive with the right to wages, courts of admiralty have denied the right to set-off upon the basis of the "wardship theory." *Taylor v. Calmar S. S. Co.* (E. D., Pa.), 35 F. Supp. 335; *Cornell v. Gulf Oil Co.* (E. D., Pa.), 35 F. Supp. 448.

Because the Act of 1790 was incapable of stemming the tides of abuses which either short-changed the seamen or left them completely without funds after long periods of service, and frequently in ports distant from their homes, and because the early decisions invited further abuses, the Congress took the problem in hand and legislated a program expressly for the "protection of seamen" and covered every aspect of the seamen's wages, thus superseding the earlier decisions. That Act, which is generally known as the Shipping Commissioner's Act of 1872,[7] set out the conditions of hiring and discharging of the seamen, the time

7. Act of June 7, 1872, c. 322, 17 Stat. 262.

for payment of wages, the penalty for failure to pay within the prescribed period of time, and the limited circumstances under which deductions could be made from the seamen's wages. Some of the background leading to the legislation was considered by this Court in *Patterson v. The Bark Eudora*, 190 U. S. 169. This Court stated as follows, at page 175:

> "If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard, and the ship at sea, the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed."

The Congressional intent to legislate with regard to every phase of the seamen's wages is clearly manifest from an examination of the several provisions. Section 596 of Title 46 provides:

> "The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa,

> within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; . . ."

This Section is the first expression on the part of Congress covering every type of shipping contract which puts teeth into the law compelling prompt and full payment of seamen's wages.

By Section 601 of Title 46 Congress demonstrated its intention that seamen's wages should be held inviolate even from court order, except for the support of a wife or minor children. The necessary import of this section is that neither the shipowner nor any other person can directly or indirectly obtain or arrest any part of a seaman's wages. In *Wilder v. Inter-Island Steam Navigation Co.*, 211 U. S. 239, a party obtained a judgment against a seaman and attempted to attach the seaman's wages in order to obtain satisfaction, on the basis of a local statute permitting this practice. The Supreme Court refused to permit any deduction from the seaman's wages and foreclosed the application of any local statute permitting satisfaction of a judgment by attachment of a seaman's wages, and this conclusion was reached from an interpretation of Section 601 of Title 46.

Certainly, if the shipowner had obtained judgment upon its claim in the instant case in an independent suit or had reduced its counterclaim in this suit to judgment, Section 601 and the *Wilder* case would have prohibited satisfaction of that judgment by attachment of this seaman's wages even though these funds remained in the hands of the shipowner. It follows that the shipowner's un-

liquidated claim can have no greater dignity than if it had been reduced to judgment; and if the judgment could not be satisfied out of the wages, it is indisputably clear that the unliquidated claim may likewise not be satisfied out of wages. Reduced to its essentials, the problem here is whether the shipowner can accomplish by indirection what it is forbidden to do by the statute, and the answer to this must be clearly in the negative in view of the *Wilder* case. What has been said is, of course, upon the assumption that there is no other provision in the federal statutes authorizing a set-off against respondent's wages, as the courts below found.

Section 701 of Title 46 outlines various circumstances which entitle the shipowner to withhold any sums from seamen's wages. These provisions relate generally to cases involving certain types of misconduct on the part of the seamen, such as desertion, disobedience to orders, smuggling and the like. Section 654 et seq. of Title 46 permits deductions where the members of the crew improperly detain the vessel upon an unfounded claim of unseaworthiness. Other provisions in the statutes permit deductions for purchases from the ship's slop chest, 46 U. S. C. § 670, and allotments to next-of-kin, 46 U. S. C. § 599 (b) (c). It is thus apparent that none of the statutory provisions justify a deduction under the facts in the instant case and, under these circumstances, the petitioner was unwarranted in withholding payment of respondent's wages.

In *Eldridge v. Isbrandtsen Company, Inc.* (E. D., Pa.), 89 F. Supp. 718, the shipowner deducted approximately $10,000.00 in seamen's wages at the end of the voyage. A libel claiming wages and penalty was filed and the Isbrandtsen Company answered by charging desertion in a foreign port (forfeiting wages earned prior to that time under 46 U. S. C. § 701) and further asserting the right to "set-off" the consequential damages suffered by reason of the delay of the vessel resulting from the seamen's alleged refusal to rejoin the vessel. The Court recognized that

the charge of desertion, if proven, might justify the forfeiture under 46 U. S. C. § 701 (1), and might constitute a defense to the libel, but sustained libellant's exceptions to the "set-off" for consequential damages since it was not a forfeiture or deduction authorized by statute, at page 720:

> ". . . We are aware of no decided cases in which an attempt was made, as in this action, to assert desertion not only as a defense to a libel, but, in addition thereto, claim the right of deduction as a set-off for consequential damages for delay due to desertion. *We feel that the only deductions which may be made from a seaman's wages are those specifically authorized by the Act. If respondent should be allowed to assert a set-off in this manner, it would be indirectly nullifying the intendments of the statutes for the protection of seamen. . . .*"[8] (Emphasis supplied.)

In *Shilman v. United States*, 2d Cir., 164 F. (2d) 649, a merchant seaman employed by the United States was tried before a special court martial for unlawfully taking an adding machine from an office at Tunisia, and sentenced, inter alia, to pay a fine of $200.00 to the United States. The United States deducted this fine from his wages whereupon he filed a libel for its recovery. The Government urged that it had the right to set off this fine against the earned wages. Judge Hand of the Court of Appeals for the Second Circuit overruled this defense upon the ground *that there cannot be any deduction from a seaman's wages except where specifically authorized by statute.*[9] Judge

8. The *Eldridge* case proceeded to trial on January 24, 1951, before District Judge Grim and, at the conclusion of the trial, the Court awarded wages to the seaman as claimed and $5,000.00 in addition under the "2 for 1" statute, 46 U.S.C. § 596 (not reported).

9. Petitioner cites the *Shilman* case in support of its contentions and points to a single paragraph in that opinion, 164 F. (2d) 649, 652, where the Court summarizes the early cases cited by the shipowner (most of which have been cited in the petitioner's brief), and then states that they are inapplicable. We respectfully submit that a mere listing of cases cited by the unsuccessful litigant coupled with a statement by the Court that these cases are not relevant neither suggests nor infers that the Court cited these cases with approval.

Augustus Hand first reviewed some of the statutes relating to seamen's wages and then stated:

> (p. 650) *"The above sections look towards payment to the seaman by his employer, at the termination of the employment, of all of his earned wages, without any deductions except those which are expressly authorized by statute."* (Emphasis supplied.)

In the instant case, petitioner concedes, as it must, that its claim to set-off is not authorized by any statutory provision. It is submitted that this admission is fatal to petitioner's case and requires an affirmance of the decisions below. The Act of 1872 was designed specifically to protect seamen's wages in every instance, except under specified circumstances. None of those circumstances exist in this case. Petitioner would have the Court invoke a new rule in lieu of the existing statutory scheme and thus open the door to the flood of abuses which provoked the enactment of the Act of 1872. The expressed Congressional purpose and considerations of policy should impel this Court to reject petitioner's contention.

In *Halcyon Lines v. Haenn Ship Ceiling and Refitting Corporation,* 342 U. S. 282 (Adv. Rep.), this Court was recently called upon to create a rule of contributionship between joint tort feasors in the maritime field. In view of existing legislation, much more limited in scope than the legislation involving seamen's wages, this Court declined as a matter of policy to judicially create a rule of contribution, being of the view that the problem was properly the function of the Congress. The principles there enunciated are equally applicable here. And this Court might consider whether for reasons of policy, the extension of the right to set-off urged by the petitioner might more properly be left to the Congress.

In passing, it is noted that petitioner urges this Court to abandon the so-called "wardship theory" as being obsolete and no longer necessary. The impropriety of this

suggestion is indicated by the many decisions of this Court, almost to the present day, holding without exception, that seamen must be regarded as wards of the admiralty and the courts must be ever vigilant to protect the seamen against any inroads by the employers. *Socony-Vacuum Oil Co. v. Smith*, 305 U. S. 424; *Waterman S. S. Corp. v. Jones*, 318 U. S. 724; *Garrett v. Moore McCormack Co.*, 317 U. S. 239; *Warner v. Goltra*, 293 U. S. 155.

Mr. Justice Cardoza said, in *Cortes v. Baltimore Insular Line*, 287 U. S. 367, at page 377:

> ". . . The conditions at sea differ widely from those on land, and the diversity of conditions breeds diversity of duties. This court has said that 'the ancient characterization of seamen as "wards of admiralty" is even more accurate now than it was formerly.'"

The court below recognized the clear applicability of the wardship theory in connection with the judicial interpretation of statutes and said, 190 F. (2d) 991, 993:

> "We think it unnecessary to discuss here all of the causes sufficient to warrant the withholding of wages. *It is clear that Sections 4529 and 4596 must be liberally construed in favor of seamen, wards of the admiralty.* See Garrett v. Moore-McCormack Company, 317 U. S. 239, 63 S. Ct. 246, 87 L. Ed. 239, and Waterman Steamship Corporation v. Jones, 318 U. S. 724, 63 S. Ct. 930, 87 L. Ed. 1107. *A court will be loath to wipe away the benefits conferred by the statutes on seamen as a class because of the criminal conduct of one seaman.*" (Emphasis supplied.)

In *Wilder v. Inter-Island Steam Navigation Co.*, 211 U. S. 239, this Court, in interpreting the legislation involved in this case, reiterated the applicability of the wardship theory and stated at page 246:

> ". . . But we are of opinion that this statute (forbidding attachment of seamen's wages) is not to be

too narrowly construed, but rather to be liberally interpreted with a view to effecting the protection intended to be extended to a class of persons whose improvidence and prodigality have led to legislative provisions in their favor, and which has made them, as Mr. Justice Story declared, 'the wards of the admiralty.'" Harden v. Gordon, 2 Mason, 541, Fed. Cas. No. 6,047." (Material in parentheses added.)

It follows that seamen must be regarded as wards of the admiralty no less today than they were in the early days of our history. The application of this doctrine to the wage statutes suggests that this Court most liberally construe this legislation in favor of the seamen.

The Wage Statutes Are Not Exclusively Penal or Criminal Statutes But Control as Well the Civil Rights Between Shipowner and Seamen.

Although there are several provisions in the Act of 1872 which may be regarded as penal in character, the Act as a whole is expressly for the "protection of seamen" and, therefore, must be construed as a remedial statute. Petitioner overlooks all of the provisions of the Act of 1872 and refers only to Section 701. Reference has already been made to the other sections of the Act from which it clearly appears that Congress intended to protect the wages of the seamen from all encroachments by the ship masters or others. Ignoring all of these remedial features of the Act, petitioner directs the Court's attention to the penalty provisions in Section 701 and argues from this that the legislation is penal and, therefore, must be cut adrift from the civil rights and liabilities of the parties. An examination of Section 701 discloses that there are eight provisions, the first three of which provide only for forfeiture of wages or personal effects, while the last five provide for imprisonment or forfeiture. This section of

the Act, therefore, is penal in part and remedial in its other parts.

Crawford, in "The Construction of Statutes," points out that this type of statute is both penal and remedial (or civil), at page 106, as follows:

> "Obviously, a statute may be both remedial and penal, or even penal in one part and remedial in another. Sometimes it is not easy to decide whether a statute is penal or remedial. The substance and effect rather than mere form is the decisive factor, although if a penalty is provided for, the statute is, at least, penal in character. *The courts do, however, recognize one obvious distinction between a penalty or forfeiture occurring to the benefit of an aggrieved person and a penalty prescribed as a criminal punishment. In the former instance, the statute is regarded as remedial and the penalty is recoverable by a private action.*" (Emphasis supplied.)

See also, *Brady v. Daly*, 175 U. S. 148, 155-157. The seamen's statutes provide that all forfeitures of wages other than those for desertion "shall be for the benefit of the master or owner by whom the wages are payable." R. S. § 4604, 46 U. S. C. § 706. Accordingly, since the forfeitures of R. S. § 4596 and the other sections inure to the benefit of and are payable to the shipowner, these provisions are remedial in nature and control the civil rights of the parties.

Thus, an examination of Section 701 together with the other wage statutes refutes the contention of petitioner that the statute, being penal, is irrelevant in determining what wages are due to this seaman and, on the contrary, supports the view that insofar as the provisions relate to the disposition of the seamen's wages, they are remedial in character and determine the civil rights of the parties.

CONCLUSION.

The entire scheme of the federal legislation is designed to insure prompt payment of seamen's wages and to eliminate the many abuses which resulted in the extraordinary hardships visited upon the seamen and their families because of the deductions from earnings. While normally in shore employment the worker is able to provide sustenance for his family from his compensation weekly received, the seaman must await the very end of his employment before he can provide the necessities urgently needed by his dependents. In order to prevent the dissipation of the earnings in the course of the voyage, Congress curtailed the right of the seaman to obtain more than a limited amount of any sums due him prior to the termination of the contract. This was for the purpose of protecting the seaman and his family against his own improvidence.

In a like manner, the Congress enacted the strongest kind of legislation to protect those same funds against invasion by shipowners or other persons and authorized deductions only under limited specified circumstances. This legislation has well served to reduce the many cases of hardship inflicted upon seamen and their families in situations where wages earned over long periods of service were withheld or forfeited in some manner. It would appear that the petitioner in pursuing this relatively trivial claim is intent not upon the recovery of the particular funds involved in this isolated case, to be reimbursed for its expenses, but upon the destruction of a wholesome piece of legislation which the Congress adopted after many sad experiences. Sound public policy and the clear mandate of the legislation involved impel the conclusion that the courts below were correct and should be sustained.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
CHARLES LAKATOS,
WILLIAM M. ALPER,
Counsel for Respondent.

APPENDIX TO RESPONDENT'S BRIEF.

STATUTES FOR DEDUCTION OR FORFEITURE OF SEAMEN'S WAGES.

R. S. § 4522; 46 U. S. C. § 576:

"... If any seaman shall neglect to render himself on board the vessel for which he has shipped at the time mentioned in such memorandum without giving twenty-four hours' notice of his inability to do so, and if the master of the vessel shall, on the day in which such neglect happened, make an entry in the log book of such vessel of the name of such seaman, and shall in like manner note the time that he so neglected to render himself after the time appointed, then every such seaman shall forfeit for every hour which he shall so neglect to render himself one-half of one day's pay, according to the rate of wages agreed upon, to be deducted out of the wages. If any such seaman shall wholly neglect to render himself on board of such vessel, or having rendered himself on board shall afterwards desert, he shall forfeit all of his wages or emoluments which he has then earned ..."

R. S. § 4525; 46 U. S. C. § 592:

"... But in all cases of wreck or loss of vessel, proof that any seaman or apprentice has not exerted himself to the utmost to save the vessel, cargo, and stores shall bar his claim (for wages)." (Words in parentheses supplied.)

Act of June 26, 1884, c. 121, § 10, 23 Stat. 55, as amended; 46 U. S. C. § 599:

"(b) It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents,

parents, wife, sister, or children, or for deposits to be made in an account opened by him and maintained in his name either at a savings bank or a United States postal savings depository subject to the governing regulations thereof.

"(c) No allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made, or by directing the payments to be made to a savings bank or a United States postal savings depository in an account maintained in his name."

R. S. § 4557; 46 U. S. C. § 654:

". . . But if the complaint of the crew (referring to 46 U. S. C. § 653, complaint of vessel's unseaworthiness) shall appear upon the report and judgment to have been without foundation, the master or commander, or the owner or consignee of such vessel, shall deduct the amount thereof, and of reasonable damages for the detention, to be ascertained by the judge or justice, out of the wages of the complaining seamen. . . ." (Material in parentheses supplied.)

R. S. § 4558; 46 U. S. C. § 655:

"If, after judgment that such vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations as may be directed, the seamen, or either of them, shall refuse to proceed on the voyage, he shall forfeit any wages

that may be due him. This section shall not apply to fishing or whaling vessels or yachts."

R. S. § 4562; 46 U. S. C. § 659:

"The master shall pay all such reasonable charges for inspection under such complaint as shall be officially certified to him under the hand of the consul; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul directing the inquiry may officially certify."

R. S. § 4566; 46 U. S. C. § 663:

"If the officer to whom any such complaint in regard to the provisions or the water is made certifies in such statement that there was no reasonable ground for such complaint, each of the parties so complaining shall forfeit to the master or owner his share of the expense, if any, of the survey. This section shall not apply to fishing or whaling vessels or yachts."

Act of June 26, 1884, c. 121, § 11, 23 Stat. 56; 46 U. S. C. § 670:

"Every vessel mentioned in section 666 of this title shall also be provided with a slop chest, which shall contain a complement of clothing for the intended voyage for each seaman employed, including boots or shoes, hats or caps, underclothing and outer clothing, oiled clothing, and everything necessary for the wear of a seaman; also a full supply of tobacco and blankets. Any of the contents of the slop chest shall be sold, from time to time, to any or every seaman applying therefor, for his own use, at a profit not exceeding 10 per centum of the reasonable wholesale

value of the same at the port at which the voyage commenced. . . ."

R. S. § 4596, as amended; 46 U. S. C. § 701:

"Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

"First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

"Second. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion, by forfeiture from his wages of not more than two days' pay or sufficient to defray any expenses which shall have been properly incurred in hiring a substitute.

"Third. For quitting the vessel without leave, after her arrival at the port of her delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

"Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

"Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea, by being, at the option of the master, placed in irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of a sum of not more than twelve days' pay, or by imprisonment for not more than three months, at the discretion of the court.

"Sixth. For assaulting any master, mate, pilot, engineer, or staff officer, by imprisonment for not more than two years.

"Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

"Eighth. For any act of smuggling for which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability, and he shall be liable to imprisonment for a period of not more than twelve months."

R. S. § 4604, as amended; 46 U. S. C. § 706:

"All clothes, effects, and wages which, under the provisions of sections 541-543, 545-549, 561, 562, 564-571, 574-578, 591-597, 600, 602-605, 621-628, 641-643, 644, 645, 651-660, 661-669, 674,679, 682-685, 701-710, and 711-713 of this title, are forfeited for desertion, shall be applied, in the first instance, in payment of the expenses occasioned by such desertion, to the master or owner of the vessel from which the desertion has

taken place, and the balance, if any, shall be paid by the master or owner to any shipping commissioner resident at the port at which the voyage of such vessel terminates; and the shipping commissioner shall account for and pay over such balance to the judge of the district court within one month after the commissioner receives the same, to be disposed of by him in the same manner as is prescribed for the disposal of the money, effects, and wages of deceased seamen. Whenever any master or owner neglects or refuses to pay over to the shipping commissioner such balance, he shall be liable to a penalty of double the amount thereof, recoverable by the commissioner in the same manner that seamen's wages are recovered. *In all other cases of forfeiture of wages, the forfeiture shall be for the benefit of the master or owner by whom the wages are payable.*" (Emphasis supplied.)

R. S. § 4605; 46 U. S. C. § 707:

"Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has, in the course of the voyage, been convicted of any offense by any competent tribunal, and rightfully punished therefor, by imprisonment or otherwise, the court hearing the case may direct a part of the wages due to such seaman, not exceeding $15, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment."

R. S. § 4603; 46 U. S. C. § 705:

"Any question concerning the forfeiture of, or deductions from, the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding the offense in respect of which such question arises, though made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding."

STATUTES FOR PROTECTION OR DISPOSITION OF SEAMAN'S WAGES.

R. S. § 4524; 46 U. S. C. § 591:

"A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens."

R. S. § 4525; 46 U. S. C. § 592:

"No right to wages shall be dependent on the earning of freight by the vessel; but every seaman or apprentice who would be entitled to demand and receive any wages if the vessel on which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same of the master or owner in personam, notwithstanding that freight has not been earned. . . ."

R. S. § 4526, as amended; 46 U. S. C. § 593:

"In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679 and 681 of this title. . . ."

R. S. § 4527; 46 U. S. C. § 594:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the

master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

R. S. § 4529, as amended; 46 U. S. C. § 596:

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; . . ."

R. S. § 4530, as amended; 46 U. S. C. § 597:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage

is ended, and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. *And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in the preceding section:* Provided further, That notwithstanding any release signed by any seaman under section 644 of this title any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: . . ." (Emphasis supplied.)

Act of June 26, 1884, c. 121, §10, 23 Stat. 55; 46 U. S. C. § 599:

"(a) It shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. . . . The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. . . ."

R. S. § 4535; 46 U. S. C. § 600:

"No seaman shall, by any agreement other than is provided by sections 541-543, 545-549, 561, 562, 564-

571, 574-578, 591-597, 600, 602-605, 621-628, 641-643, 644, 645, 651-660, 661-669, 674-679, 682-685, 701-710, and 711-713 of this title, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of such sections, and every stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative."

Act of March 4, 1915, c. 153, § 12, 38 Stat. 1169; 46 U. S. C. § 601:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. . . ."

R. S. § 4537; 46 U. S. C. § 602:

"No sum exceeding $1 shall be recoverable from any seaman, by any one person, for any debt contracted during the time such seaman shall actually belong to any vessel, until the voyage for which such seaman engaged shall be ended."

R. S. § 4548; 46 U. S. C. § 605:

"Moneys paid under the laws of the United States, by direction of consular officers or agents, at any foreign port or place, as wages, extra or otherwise, due American seaman, shall be paid in gold or its equiva-

lent, without any deduction whatever, any contract to the contrary notwithstanding."

R. S. § 4538; 46 U. S. C. § 621:

"Whenever any seaman or apprentice belonging to or sent home on any merchant vessel, whether a foreign-going or domestic vessel, employed on a voyage which is to terminate in the United States, dies during such voyage, the master shall take charge of all moneys, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of such clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log book, and cause it to be attested by the mate and one of the crew, containing the following particulars:

"First. A statement of the amount of money so left by the deceased.

"Second. In case of a sale, a description of each article sold, and the sum received for each.

"Third. A statement of the sum due to deceased as wages, and the total amount of deductions, if any, to be made therefrom."

R. S. § 4539; 46 U. S. C. § 622:

"In cases embraced by section 621 of this title, the following rules shall be observed:

"First. If the vessel proceeds at once to any port in the United States, the master shall, within forty-eight hours after his arrival, deliver any such effects remaining unsold, and pay any money which he has taken charge of or received from such sale, and the balance of wages due to the deceased, to the shipping commissioner at the port of destination in the United States.

"Second. If the vessel touches and remains at some foreign port before coming to any port in the

United States, the master shall report the case to the United States consular officer there, and shall give to such officer any information he requires as to the destination of the vessel and probable length of the voyage; and such officer may, if he considers it expedient so to do, require the effects, money, and wages to be delivered and paid to him, and shall, upon such delivery and payment, give to the master a receipt; and the master shall within forty-eight hours after his arrival at his port of destination in the United States produce the same to the shipping commissioner there. Such consular officer shall, in any such case, indorse and certify upon the agreement with the crew the particulars with respect to such delivery and payment.

"Third. If the consular officer does not require such payment and delivery to be made to him, the master shall take charge of the effects, money, and wages, and shall, within forty-eight hours after his arrival at his port of destination in the United States, deliver and pay the same to the shipping commissioner there.

"Fourth. The master shall, in all cases in which any seaman or apprentice dies during the voyage or engagement, give to such officer or shipping commissioner an account, in such form as they may respectively require, of the effects, money, and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified by an entry in the official log book, if there be any; and by such other vouchers, if any, as may be reasonably required by the officer or shipping commissioner to whom the account is rendered.

"Fifth. Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United States, the

shipping commissioner shall grant to the master a certificate to that effect. No officer of customs shall clear any foreign-going vessel without the production of such certificate."

R. S. § 4540; 46 U. S. C. § 623:

(This section sets forth penalties upon the master for failure to dispose of the wages and personal effects of a deceased seaman in accordance with previous sections.)

R. S. § 4552; 46 U. S. C. § 644:

"The following rules shall be observed with respect to the settlement of wages:

"First. Upon the completion before a shipping commissioner, of any discharge and settlement, the master or owner and each seaman, respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seamen assent to such settlement, or the settlement has been adjusted by the shipping commissioner.

"Second. Such release, so signed and attested, shall operate as a mutual discharge and settlement of all demands for wages between the parties thereto, on account of wages, in respect of the past voyage or engagement.

"Third. A copy of such release, certified under the hand and seal of such shipping commissioner to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

"Fourth. In cases in which discharge and settlement before a shipping commissioner are required no payment, receipt, settlement, or discharge otherwise made shall operate as evidence of the release or satisfaction of any claim.

"Fifth. Upon payment being made by a master before a shipping commissioner, the shipping commissioner shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned."

R. S. § 4580, as amended; 46 U. S. C. § 682:

"Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any Act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman; but no payment of extra wages shall be required by any consular officer upon such discharge of any seaman except as provided in sections 658, 683, 684, and 685 of this title."

R. S. § 4581, as amended; 46 U. S. C. § 683:

"If any consular officer, when discharging any seaman, shall neglect to require the payment of and collect the arrears of wages and extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States for the full amount thereof. The master shall provide any seaman

so discharged with employment on a vessel agreed to by the seaman, or shall provide him with one month's extra wages, if it shall be shown to the satisfaction of the consul that such seaman was not discharged for neglect of duty, incompetency, or injury incurred on the vessel. If the seaman is discharged by voluntary consent before the consul, he shall be entitled to his wages up to the time of his discharge, but not for any further period. If the seaman is discharged on account of injury or illness, incapacitating him for service, the expenses of his maintenance and return to the United States shall be paid from the fund for the maintenance and transportation of destitute American seaman. . . ."

R. S. § 4582, as amended; 46 U. S. C. § 684:

"Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding $50."

R. S. § 4583, as amended; 46 U. S. C. § 685:

> "Whenever on the discharge of a seaman in a foreign country by a consular officer on his complaint that the voyage is continued contrary to agreement, or that the vessel is badly provisioned or unseaworthy, or against the officers for cruel treatment, it shall be the duty of the consul or consular agent to institute a proper inquiry into the matter, and, upon his being satisfied of the truth and justice of such complaint, he shall require the master to pay to such seaman one month's wages over and above the wages due at the time of discharge, and to provide him with adequate employment on board some other vessel, or provide him with a passage on board some other vessel bound to the port from which he was originally shipped, or to the most convenient port of entry in the United States, or to a port agreed to by the seaman."

Act of June 26, 1884, c. 121, § 18, 23 Stat. 57; 46 U. S. C. § 189:

> "The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending: Provided, That this provision shall not prevent any claimant from joining all the owners in one action; *nor shall the same apply to wages due to persons employed by said shipowners.*" (Emphasis supplied.)